

### **REMARKS/ARGUMENTS**

Prior to this Amendment, claims 1-7, 10, 11, and 18-26 were pending in the application. No claim amendments are made by this Amendment, with the Listing of Claims being provided for ease of review by the Examiner and completeness of the file.

#### **Request for Information under 37 C.F.R. §1.105**

In the Office Action, the Examiner raised an issue of public use or on sale activity that he believed may be relevant to the application and the pending claims. Specifically, the Examiner believed materials attached to the Office Action regarding the "VR-1 Conductor" product (hereinafter, simply "the Conductor") which he attributed to the assignee of the application. Applicants believe they address any potential public use or on sale issues with the following remarks and attached information regarding the Conductor.

The Examiner also reminded the Applicants and others associated with their duty to disclose all information relevant to the allowance of the pending claims. Applicants believe they have fully complied with this duty and will continue to do so during the prosecution of this application.

#### **Rejection of the Claims under 35 U.S.C. §102**

In the Office Action, all of the pending claims were rejected under 35 U.S.C. §102(b) based upon a public use or sale of the invention. Specifically, the Office Action provided a variety of documentation regarding the Conductor and its sale and use prior to the filing of the current application.

Applicants traverse the rejection of claims based on the prior use or sale of Conductor. The rejection is not traversed based on the timing of the use or sale. Instead, the rejection is traversed because the Conductor did not include the claimed invention or include features or technology that anticipates or makes obvious any of the pending claims. The present invention was included in later-developed and/or marketed products/services of the assignee, i.e., the "WARP Appliance." Hence, the Conductor does not fulfill the requirements for an "On

Sale” or “Public Use” rejection as explained in MPEP 2133.03(b) that “the subject matter of the sale, or offer to sell, fully anticipated the claimed invention...” because each and every limitation of the claims is not taught by the Conductor (note also that the Office Action did not provide a citation to the documentation regarding the Conductor for each claim limitation as required for a proper anticipation rejection).

The Office Action specifically noted that literature concerning the Conductor mentioned Mark Vange, one of the inventors, by name and that his input should be obtained regarding the Conductor and its prior use and/or sale. Mr. Vange concurs that the Conductor is different than the present invention and the WARP Appliance. The following provides a summary of some of the differences that Mr. Vange reported. The Conductor is mainly a Software Development Kit (SDK) for writing games and 3D simulations. It includes a library that is utilized by the application program to provide it with communication through the network and, in this sense, may be compared to competing products such as Microsoft’s Direct Play and the like. In contrast, the WARP Appliance is a novel architecture that uses the assignee’s expertise in network protocols to achieve a very different result: allowing improved communications without an application needing to be aware of the provided network improvement layer.

Some of the differences between the Conductor and the WARP Appliance are that the Conductor is best suited for games that are written to run under Conductor while the WARP Appliance supports standard applications. The Conductor uses private interfaces between the application and the library while the WARP Appliance can use well-known public standards (like TCP) to interface to applications. The WARP Appliance delivers lossless data such as Web pages while the Conductor delivers lossy data. The Conductor provides automatic revision control, predictive motion, and other elements that are irrelevant to the WARP Appliance. Also, the WARP Appliance treats data as being user-specific or transactional while the Conductor has Lobbies and Arenas to facilitate massively interactive games and simulations.

The above contrasts and differences are not provided as an admission of prior art or as an implication that the pending application and its claims are limited to specific implementations or to a particular construction (i.e., the claim language must be construed based on the teaching of the application itself). Instead, the above discussion is intended to assist the Examiner in understanding the Conductor and why it is not useful as evidence of an on sale or public use of the invention presently claimed in the application.

To further assist the Examiner, attached is a document entitled "What is Conductor?" that provides an overview of the Conductor. Applicants believe that this further description of the Conductor will make it clear that the Conductor does not support a conclusion that the invention of claims 1-7, 10, 11, and 18-26 were on sale or in public use as required under 35 U.S.C. §102. Applicants request that the rejection of the claims be withdrawn or that the Examiner show where and how the Conductor teaches each and every limitation of the pending claims.

It is believed that this Amendment and the attached information address issues raised by the Examiner regarding the Conductor. However, Applicants are more than willing to attempt to locate and provide additional SDK documentation or other explanatory information for the Conductor.

### **Conclusions**

Based on the above discussion, Applicants request that a timely Notice of Allowance be issued in this case.

An extension of time is requested with the filing of this Amendment, which is being filed electronically via EFS-Web. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

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